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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

B&G FOODS NORTH AMERICA, INC.,

Plaintiff,

v.

KIM EMBRY and ENVIRONMENTAL  
HEALTH ADVOCATES, INC., acting as  
enforcement representatives under California  
Proposition 65 on behalf of the State of  
California,

Defendants.

Case No. 2:20-cv-00526-KJM-DB

**DECLARATION OF KIM EMBRY**

Judge: Hon. Kimberly Mueller  
Magistrate: Hon. Deborah Barnes  
Action Filed: March 6, 2020

1 I, Kim Embry, declare:

2 1. I am a named Defendant in this action. I make this declaration in support of my and  
3 co-Defendant Environmental Health Advocates, Inc.'s ("EHA") Motion for Summary Judgment.  
4 I am familiar with the facts stated herein, and if called upon as a witness, I could testify to the  
5 following facts based on my own personal knowledge.

6 2. From around 2017-2020, I was a citizen enforcer of Proposition 65 who  
7 investigated and brought Notices of Violation ("NOV") and lawsuits regarding acrylamide  
8 exposure in food products.

9 3. This lawsuit concerns, in part, my NOV, served on April 22, 2019, and lawsuit filed  
10 on March 6, 2020, regarding acrylamide found in Plaintiff B&G Foods North America, Inc.'s  
11 ("B&G") SnackWell's Devil's Food Fat Free Cookie Cakes ("Cookie Cakes").

12 4. I understand that B&G alleges (e.g., at ¶ 80 of the Seconded Amended Complaint)  
13 that IEH Laboratories ("IEH") – the laboratory that tested the Cookie Cakes sample as part of my  
14 investigation – destroyed the sample at my personal instruction. This is not accurate. I never  
15 instructed IEH (or told my attorneys or anyone else to instruct IEH), via written, oral, or other  
16 transmission, to destroy the Cookie Cakes sample after testing.

17 I declare under penalty of perjury under the laws of the United States that the foregoing is  
18 true and correct. Executed on July 15, 2024, in Barcelona, Spain.

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By:

  
Kim Embry (Jul 16, 2024 10:03 PDT)

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Kim Embry  
Declarant/Defendant

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